

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSE MACKENSY,

Petitioner,

- against -

DAVID L. MILLER, Superintendent,  
Eastern Correctional Facility,

Respondent.  
-----X

DEBORAH A. BATTIS, United States District Judge.

This matter is before the Court upon the November 3, 2009 Report and Recommendation of United States Magistrate Judge Michael H. Dolinger. Pursuant to 28 U.S.C. § 636(b)(1)(C), "[w]ithin ten days after being served with a copy [of the Magistrate Judge's Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations." 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b). No objections to the Report and Recommendation have been filed.

Having reviewed the Report and Recommendation and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of United States Magistrate Judge Michael H. Dolinger dated November 3, 2009 be and the same hereby is approved, adopted, and ratified by the

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00 Civ. 9296 (DAB)  
ADOPTION OF REPORT  
AND RECOMMENDATION

Court;

2. The petition for a writ of habeas corpus is hereby  
DENIED;

3. The Clerk of the Court is directed to dismiss the  
petition.

As petitioner has not made a substantial showing of the  
denial of a constitutional right, a certificate of appealability  
will not issue. 28 U.S.C. § 2253, as amended by the  
Antiterrorism and Effective Death Penalty Act of 1996. See  
generally Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997);  
see also Rodriguez v. Scully, 905 F.2d 24 (2d Cir. 1990) (per  
curiam) (discussing issuance of a certificate of probable cause  
under standard prior to 1996 amendment to § 2253); Alexander v.  
Harris, 595 F.2d 87, 90-91 (2d Cir. 1979) (same). The Court  
certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from  
this Order would not be taken in good faith. See Coppedge v.  
United States, 369 U.S. 438 (1962).

SO ORDERED

DATED: New York, New York

January 8, 2010

Deborah A. Batts

DEBORAH A. BATTS  
United States District Judge